

IFW

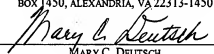


PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Guerst et al.	Examiner: John O. Lacyk
Serial No.: 10/804,391	Group Art Unit: 3735
Filed: March 18, 2004	
For: BLOOD VESSEL HOLDING AND POSITIONING SYSTEM	Docket No. MTI0113/US (P-11580.00)

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I HEREBY CERTIFY THAT ON May 6, 2009, THIS
CORRESPONDENCE IS BEING DEPOSITED WITH THE U.S. POSTAL
SERVICE AS FIRST CLASS MAIL, ADDRESSED TO MAIL STOP
APPEAL BRIEF-PATENTS, COMMISSIONER FOR PATENTS. P. O.
BOX 1450, ALEXANDRIA, VA 22313-1450

MARY C. DEUTSCH

CONSIDERED: /J.L./

REPLY BRIEF

Dear Sir or Madam:

This Reply Brief is submitted in response to the Examiner's Answer mailed March 6, 2009, in the above-identified patent application, which is under appeal.

It is further submitted that this Reply Brief is timely filed within the two-month period set out in M.P.E.P § 1208 from the date of the Examiner's Answer. No fee is believed to be due at this time. If any fees are required, please charge them to Deposit Account No. 50-1775 and notify us of the same.

Table of Contents

PAGE

I	Status of Claims.....	3
II.	Grounds of Rejection to be Reviewed on Appeal	4
III.	Argument	5
IV.	Conclusion	7
V.	Appendix: Claims on Appeal	8

I. Status of Claims

The Examiner's Answer includes a statement that the status of the claims as contained within Applicants' Appeal Brief is correct.

The status was provided as set forth below.

Claims 1, 4-10, 13, 15-17 and 24-31 are pending in the above-identified patent application. Claims 2-3, 11-12, and 14 have been canceled. Claims 18-23 and 32-37 are withdrawn. Claims 1, 4-10, 13, 15-17 and 24-31 stand rejected. Claims 1, 4-10, 13, 15-17 and 24-31 are on appeal.

II. Grounds of Rejection to be Reviewed on Appeal

The Examiner's Answer includes a statement that the grounds of rejection to be reviewed on appeal is correct.

Whether claims 1, 4-10, 13 and 15-17 are patentable under 35 U.S.C. 103(a) over Kimberley et al. (US Pat. 3,361,133) in view of Collito (US Pat. 3,254,650) or Toch (US Pat. 3,916,875).

Whether claims 1, 4-10, 13, 15-17, and 24-31 are patentable under 35 U.S.C. 103(a) over Peternel (US Pat. 3,561,448) in view of Collito or Toch.

III. Argument

In response to the Examiner's Answer, Applicants would like to include the following:

With respect to the Examiner's proposed modifications of Kimberley et al. and Peternel by either Collito or Toch, Applicants submit that such modifications of the prior art inventions render the inventions unsatisfactory for their intended purposes (see MPEP 2143.01(V)).

First, with regard to the invention in Kimberley et al., swingable arms 6, 7 include a spring bias in order to urge the two housing halves 1, 2 (holding a vessel) together (col. 2, lines 19-21). One purpose of having the swingable arms 6, 7 with spring bias is to enable the vessel being held by the invention to be connected to another vessel quickly (col. 3, lines 19-20). Using another ring to encircle the halves 1, 2 would increase the time necessary to use the Kimberley et al. invention. This would render the invention unsuitable for one of its intended purposes. Another purpose of the Kimberley et al. invention is to allow a vessel to be held without causing physical damage to the vessel (col. 3, lines 20-22). If a ring were to surround the housing halves 1, 2, it is possible that the vessel could be damaged by squeezing the housing halves 1, 2, as they are configured in the Kimberley et al. invention, too tightly around the vessel and causing damage to the vessel. Thus, the invention would be rendered unsuitable for another one of its intended purposes.

Second, with regard to the invention of Peternel, the blood vessels are engaged by sleeves 36 and 38 and brought together against the influence of spring 116 with the outwardly flared ends 20 and 22 being held in engagement (col. 4, lines 39-33). As well as being held together in such a way, the flared ends 20 and 22 are easily accessible for sewing or suturing (col., 4, lines 32-33). Adding a ring to the Peternel invention that encircles collar halves 16, 18 (as indicated in the final Official Action, p. 3, paragraph 4) could interfere with the ability to sew the flared ends 20, 22 together. Thus, the invention would be rendered unsuitable for its intended purpose.

With respect to claims 7 and 16, in the final Official Action, the Examiner provided that the swingable arms in Kimberley et al. were malleable at least to some

degree because the arms were swingable (Office Action p. 2, paragraph 3). In Examiner's Answer, the Examiner included a definition of malleable, which was "1) capable of being shaped or formed, as by pressure or hammering 2) capable of being altered or influenced." The source of the definition was not provided. Applicants continue to assert that swingable is not the same thing as malleable, and that the feature of claims 7 and 16 is not met by any of the cited references. The arms being swingable may allow them to be positioned, but does not make them malleable.

With respect to claims 7, 16 and 26, in the final Official Action, the Examiner similarly provided that the arms of the handle in Peternel were prongs that were considered to be malleable because the distance between the two arms or prongs could be changed (Office Action, p. 3, paragraph 4). Applicants continue to disagree, since being malleable and including parts that are adjustable or moveable with respect to one another are not the same thing. As such, the feature of claims 7, 16 and 26 of malleability is not met by any of the cited references.

Conclusion

In view of these remarks, it is respectfully submitted that pending claims 1, 4-10, 13, 15-17 and 24-31 are in condition for allowance. Accordingly, it is respectfully submitted that the rejections of the claims under 35 U.S.C. 103(a) be withdrawn on this appeal.

Respectfully Submitted,

By: 
Kimberly S. Zillig, Reg. No. 46,346
Customer Number 33072
Phone: 651-275-9846
Facsimile: 651-351-2954

Dated: May 6, 2009

#51981

Claims on Appeal Appendix

1. A device used to hold and position a blood vessel in the performance of a coronary artery bypass graft procedure, comprising:
 - a handle;
 - a collar coupled to the handle, the collar adapted to substantially encircle a blood vessel, the collar having a number of suction apertures;
 - a vacuum port adapted to be coupled to a vacuum source, the vacuum port communicating a suction to the suction apertures to hold the blood vessel; and
 - wherein the collar is comprised of two collar halves that together form a cylinder;and
further comprising a ring for encircling the collar halves to attach the collar halves together.
2. (canceled)
3. (canceled)
4. The device of claim 1, wherein the collar is sized to hold an internal mammary artery.
5. The device of claim 1, wherein the device is sized, shaped and constructed to hold and position a blood vessel that is a graft vessel.
6. The device of claim 1, wherein the collar has a plurality of suction apertures and the suction apertures are circular.
7. The device of claim 1, wherein the handle is malleable.
8. The device of claim 1, further comprising a vacuum line adapted to couple the vacuum port to the vacuum source.

9. The device of claim 8, wherein the vacuum line is incorporated into the handle.
10. A conduit positioning system for use in the performance of a surgical technique on a patient, comprising:
 - a collar adapted to substantially encircle a conduit in the patient, the collar having a number of suction apertures; wherein the collar is comprised of two collar halves that together form a cylinder with a length;
 - a vacuum line coupled to the suction apertures, the vacuum line having a length;
 - a vacuum source coupled to the vacuum line to create a suction at the suction apertures to hold the conduit; and a handle coupled to the attachment head;
 - wherein the length of the cylinder is substantially less than the length of the vacuum line; and
 - further comprising a ring for encircling the collar halves to attach the collar halves together.
11. (canceled)
12. (cancelled)
13. The conduit positioning system of claim 10, wherein the collar is sized and shaped to hold an internal mammary artery.
14. (canceled)
15. The conduit positioning system of claim 10, wherein the collar has a plurality of suction apertures and the suction apertures are circular.
16. The conduit positioning system of claim 10, wherein the handle is malleable.

17. The conduit positioning system of claim 10, wherein the vacuum line is incorporated into the handle.
18. (withdrawn)
19. (withdrawn)
20. (withdrawn)
21. (withdrawn)
22. (withdrawn)
23. (withdrawn)
24. A blood vessel positioning device for use in cardiac surgery, comprising:
a handle; and a first collar and a second collar coupled to the handle,
the second collar separated from the first collar by a first distance, each collar adapted to substantially encircle a blood vessel and having a number of suction apertures,
wherein the suction apertures are adapted to engage and hold the blood vessel.
25. The blood vessel positioning device of claim 24, wherein the handle comprises a first prong and a second prong, the first prong attached to the first collar and the second prong attached to the second collar.
26. The blood vessel positioning device of claim 25, wherein the first and second prongs are malleable.
27. The blood vessel positioning device of claim 24, wherein the collars are sized to encircle an internal mammary artery.

28. The blood vessel positioning device of claim 24, further comprising a vacuum source coupled to the suction apertures.

29. The blood vessel positioning device of claim 24, further comprising a vacuum line coupling the vacuum source to the first and second collars.

30. The blood vessel positioning device of claim 29, wherein the vacuum line is incorporated into the handle.

31. The blood vessel positioning device of claim 24, wherein each collar has a plurality of suction apertures and the suction apertures are circular.

32. (withdrawn)

33. (withdrawn)

34. (withdrawn)

35. (withdrawn)

36. (withdrawn)

37. (withdrawn)